MARINE OIL SPILL PREVENTION IN WASHINGTON STATE

by

Laura Hawley Stratton

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by

Laura Hawley Stratton

has been approved for

The Evergreen State College

by

_____
John Perkins, Ph.D.
Member of the Faculty

_____
Date

ABSTRACT

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Three studies, discussed in Chapter 1, support the conclusion that the "risk" of oil spills (probability times consequence) is significant in Washington State waters. Risk is indicated by volume of oil transported, vessel traffic data, and the history of major oil spills in Washington. Projections indicate that risk will increase as volume of oil transported and vessel traffic increase. Oil spill consequences include damage to the environment and negative economic and psychological impacts.

In the early 1990s, after the Exxon Valdez oil spill, Washington State responded to this "risk" by creating the Washington State Office of Marine Safety (OMS) whose mission was to prevent marine oil spills. OMS created the Best Achievable Protection (BAP) standards for tankers and tank barges and developed other marine oil spill prevention programs for cargo vessels, passenger vessels, and fishing vessels. OMS, which was funded by a tax on oil transported into Washington on tank vessels, was opposed by the shipping industry and sued by the International Organization of Independent Tanker Owners (INTERTANKO). In 1997 OMS was merged into the Washington Department of Ecology – Spill Prevention, Preparedness, and Response Program. All of OMS' programs transferred to the Department of Ecology and all of the marine safety laws remained intact, though not unchallenged.

INTERTANKO, a powerful consortium of 253 tanker owners based 40 countries, sued Washington State on the assertion that regulating tank vessels is an area reserved for the United States federal government. Washington argued that the Best Achievable Protection (BAP) standards are a proper and valid exercise of state police power to protect Washington's diverse and irreplaceable resources and held that it was entitled to regulate tank vessels under the provisions of the Oil Pollution Act of 1990 (OPA 90). The U.S. District Court ruled in favor of Washington so INTERTANKO appealed the case. The U.S. Department of Justice joined INTERTANKO and the case, *United States v. Locke, et. al.*, was appealed to the United States 9th Circuit Court of Appeals. The Appellate Court upheld the ruling of the District Court, so INTERTANKO appealed the case again, this time to the United State Supreme Court. In March 2000 the Supreme Court ruled unanimously in favor of INTERTANKO, finding that Washington's BAP standards are pre-empted by federal maritime law. In response to this setback, the Department of Ecology repealed Washington Administrative Code (WAC) 317-21, the rule mandating compliance with BAP standards for tank vessels.

In spite of federal pre-emption, the Department of Ecology still has several successful oil spill prevention programs in operation, including a voluntary BAP program (VBAP) for tank vessels, a cargo and passenger vessel inspection program, a marine casualty investigation program, and a bunker program. Several other oil spill risk management strategies are currently being developed or under study. One of Washington's most important strategies is to strengthen its alliance

with the United States Coast Guard. Evidence of progress in this area is the May 2001 signing of the Memorandum of Agreement on Oil Pollution Prevention and Response between the Commander, Thirteenth Coast Guard District and the State of Washington.

A comparison of the oil spill prevention programs in Washington, Alaska, California, Oregon, Texas, British Columbia, and the world at large reveals that only Washington has a dedicated and comprehensive oil spill prevention program for large commercial vessels. Spill rate curves based on reliable data show that spill rates are lower in Washington than in the other states surveyed and lower than the United States as a whole, indicating that Washington has been more successful at preventing oil spills than other states.

While it is not possible to prove unequivocally that oil spills have been prevented in Washington State, there is substantial evidence, based on reliable data, that strongly *suggests* that spills have been prevented. Types of evidence supporting this conclusion include spill trend analysis, performance measures, and anecdotal evidence.

The four conclusions of this thesis are:

1. It is highly probable that major oil spills posing significant risk will continue to occur in Washington State waters, including Puget Sound, the Strait of Juan de Fuca, the Columbia River, and the ocean coast of Washington;

2. Federal and international marine safety regulations, enforced by the U.S. Coast Guard, do not, by themselves, adequately protect Washington waters from the risk of marine oil spills;

3. Washington State has been more effective in preventing oil spills than other coastal states, British Columbia, and the United States as a whole; and

4. Between 1991 and 2001, Washington State programs and initiatives administered by the Office of Marine Safety and the Department of Ecology, in concert with federal and international regulations, have reduced the number of oil spills and other marine accidents occurring in Washington waters.

CONTENTS

Chapter

Chapter

Chapter

LIST OF FIGURES

LIST OF TABLES

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